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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,860	02/06/2004	Rajesh Banginwar	30320/18023	7222
4743	7590	03/15/2006	EXAMINER LAU, TUNG S	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			ART UNIT 2863	PAPER NUMBER

DATE MAILED: 03/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

BV

Office Action Summary	Application No.	Applicant(s)	
	10/773,860	BANGINWAR ET AL.	
	Examiner Tung S. Lau	Art Unit 2863	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 March 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-26 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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DETAILED ACTION

Withdraw of finality

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The Amendment filed on 03/07/2006 is entered into the record.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Mittal et al. (U.S. Patent 5,719,800).

Regarding claim 1:

Mittal discloses an article comprising a machine-accessible medium having stored thereon instructions that, when executed by a machine (abstract), cause the machine to: measure power usage on the machine (Col. 3, Lines 4-50), determining when a quantum of power has been used on the machine (Col. 5, Lines 30-42) ; and in response to the determination that a quantum of power has been used on the machine (Col. 5, Lines 1-42), sample state data of the machine (Col. 6, Lines 5-67).

Regarding claim 10:

Mittal discloses a method of profiling code executable on a machine, comprising: measuring power usage on the machine (abstract), determining when a quantum of power used on the machine (Col. 5, Lines 1-42); and in response to the determining that a quantum of power has been used on the machine (Col. 5, Lines 1-67), sampling state data on the machine (Col. 6, Lines 5-67).

Regarding claim 20:

Mittal discloses an apparatus comprising: a power measurement module capable of measuring power usage in the apparatus and capable of determining when a quantum of power has been used (abstract, Col. 3, Lines 4-50); and a power sampling module coupled to the power measurement module for sampling state data of the apparatus after each of plurality of quantum of power has been used (Col. 5-6, Lines 1-67).

Regarding claim 2, Mittal discloses provide the sampled state data to a performance analysis module and compare the sampled state data to previously sampled state data for determining a power profile on the state data (Col. 5-6, Lines 1-67); Regarding claim 3, Mittal discloses the machine has a power measurement module (fig. 4, unit 310); Regarding claim 4, Mittal discloses the machine comprises a plurality of subsystems and wherein the power measurement module is coupled to at least one of the plurality of subsystems for measuring power usage of the at least one of the plurality of subsystems (fig. 4,

unit 306, 309, 302); Regarding claim 5, Mittal discloses measure power usage of at least one of the plurality of subsystems (fig. 4, unit 306, 309, 302); Regarding claims 6, 14, Mittal discloses a network subsystem (fig. 5, unit 501, 502, 504, 506, 500); Regarding claims 7, 15, Mittal discloses a input/output device (fig. 2, unit 205); Regarding claim 8, Mittal discloses state is a program counter (fig. 2, unit 205); Regarding claim 9, Mittal discloses status of at least one subsystem of the machine (fig. 3, unit 309, fig. 4, unit 309, Col. 3, Lines 4-50).

Regarding claim 11, Mittal discloses a plurality of subsystems, and wherein measuring power usage comprises measuring power delivered to at least one of the plurality of subsystems (fig. 5, unit 501, -505); Regarding claim 12, Mittal discloses a plurality of subsystems, measuring power usage comprising measuring power consumed by at least one of the plurality of subsystems (Col. 3, Lines 4-50); Regarding claim 13, Mittal discloses a plurality of subsystems and a power measurement module capable of measuring power delivered to at least one of the plurality of subsystems (Col. 3, Lines 4-50, fig. 5, unit 501-505); Regarding claim 16, Mittal discloses providing power the machine (abstract); Regarding claim 17, Mittal discloses provide sample state to a analyzer (fig. 4, unit 310) ; Regarding claims 18, 19, 23, Mittal discloses a program counter (fig. 2, unit 205); Regarding claim 21, Mittal discloses a power source (abstract); Regarding claim 22, Mittal discloses sampled state data to stored data (fig. 3, unit 306, 310, Col. 3, Lines 4-50); Regarding claim 24, Mittal discloses power

usage code executing on the machine (fig. 2, unit 206, 202, 204); Regarding claim 25, Mittal discloses power usage code executing on the machine within one of subsystem (fig. 2, unit 205, fig. 4, unit 304, 302, Col. 3, Lines 4-50); Regarding claim 26, Mittal discloses number accesses to a memory storage (fig. 4, unit 310, Col. 8-9, Lines 54-20).

Response to Arguments

3. Applicant's arguments filed on 03/07/2006 with respect to the amended claims have been considered but they are not persuasive
 - A. Applicant argues that the prior art does not show the 'measuring power usage on the machine to effect throttling'; Mittal discloses 'measuring power usage on the machine to effect throttling ' on Col. 3, Lines 4-50, where Mittal discloses a machine can be measured the power usage base on voltage and frequency of the IC in Col. 5, Lines 1-10, and then use this information on Col. 5, Lines 13-67, Col. 2-3, Lines 65-50 to throttling the IC.
 - B. Applicant argues that the prior art does not show the 'every limitation in claims 1 and 20; please see the above rejection.

Reminds to the applicants that USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

While the meaning of claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode

of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allowed. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). To anticipate a claim, Mittal must teach every element of the claim. A claim is anticipated only if each and every elements as set forth in the claim is found, either expressly or inherently, in a single prior art reference, See *Verdegaal Bros. V. union Oil Co. of California*, 814F2d 628,631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Mittal discloses either expressly or inherently all the limitation in claims 1 and 20.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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PRIMARY EXAMINER